



**Connecticut Fund  
for the Environment**  

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**Save the Sound®**

December 13, 2016

**VIA CERTIFIED MAIL**

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Aerial Rios Building, Mail Code 1101A  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 204060

**RECEIVED**

**DEC 19 2016**

OFFICE OF THE REGIONAL ADMINISTRATOR

Curt Spalding  
Regional Administrator  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Rob Klee, Commissioner  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, CT 06106

Honorable Mark D. Boughton, Mayor  
155 Deer Hill Avenue  
Danbury, CT 06810

Antonio Iadarola, Director  
Department of Public Works  
155 Deer Hill Avenue  
Danbury, CT 06810

**Re: CFE's Second Sixty-day notice of intent to file suit for violations of the Federal Clean Water Act against the City of Danbury, CT, NPDES Permit # CT0100145**

To Whom It May Concern,

By letter dated September 26, 2016, the Connecticut Fund for the Environment, Inc. and its bi-state program Save the Sound (CFE/Save the Sound) gave notice to the City of Danbury, pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365, of our intent to bring suit against the City of Danbury (City) for ongoing and continuous violations of its National Pollutant Discharge Elimination System (NPDES) Permit, including, but not limited to unlawful

discharges of pollutants into the waters of the United States, and violations of permit discharge parameters, which are in turn violations of the Clean Water Act.

Since the issuance of that 60 Day Notice Letter, CFE/Save the Sound have been made aware of numerous instances where the City failed to report bypasses of its sewage collection to the Connecticut Department of Energy and Environmental Protection as required by Municipal NPDES Permit No. CT0100145 issued by the Connecticut Commissioner of Energy and Environmental Protection to the City. Pursuant to Municipal NPDES Permit No. CT0100145, Danbury is required to report all bypasses within 2 hours of learning of the bypass by telephone and by written report within five days of learning of each bypass to the Connecticut Department of Energy and Environmental Protection. The dates, the volumes, the locations of discharges, and the receiving waters of the unreported bypasses are described in detail in Attachment A to this letter, which is incorporated herein and made a part of this notice. Failure to report a bypass is a violation of Municipal NPDES Permit No. CT0100145 and a violation of the Clean Water Act. These violations are ongoing and CFE/Save the Sound will include additional violations as information becomes available. CFE/Save the Sound and its members are very concerned about continuing serious violations of the Clean Water Act by the City that have caused and continue to cause pollutants to enter Connecticut waters and navigable waters of the United States and which ultimately impact the health and environment of the Long Island Sound.

The purpose of this letter is to notify you, pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365, of our intent to bring suit against the City for ongoing and continuous violations of its NPDES Permit for the failure to report bypasses.

During the 60 day notice period, CFE/Save the Sound is willing to discuss effective remedies for the violations described in this letter, and actions that might be taken to ensure future compliance with the Clean Water Act. The 60 day notice period would be an appropriate time for the City to inform CFE/the Sound of any steps it has already taken to remedy the violations described in this notice letter. If you wish to pursue such discussions prior to any potential litigation, please initiate those discussions immediately.

### **CFE and Save the Sound**

Connecticut Fund for the Environment, Inc. ("CFE") was founded in 1978 to protect and improve the land, air, and water of Connecticut using advocacy and scientific expertise to achieve results that benefit our environment for current and future generations. CFE is a 501(c)(3) not-for-profit corporation, incorporated under the laws of the State of Connecticut, with its principal place of business at 900 Chapel Street, Suite 2202, New Haven, CT 06510. CFE represents more than 5,000 members in Connecticut and New York. CFE has represented the interests of its membership in legal proceedings before trial and appellate courts and federal and state administrative agencies in various proceedings in which CFE sought to protect the environment and natural resources for its members and the citizens of Connecticut. Save the

Sound was founded in 1972 as the Long Island Sound Taskforce to preserve and protect the Sound. In 2004, CFE and Save the Sound merged with Save the Sound incorporated as a bi-state program within CFE. The Save the Sound program works to protect and preserve the environmental health and natural resources of the Long Island Sound.

### **Legal Background**

Section 505 of the Clean Water Act allows citizens to bring suit in federal court against any person alleged to be in violation of the Clean Water Act or NPDES permits. Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that 60 days prior to the initiation of a citizen suit under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), citizens must give notice of their intention to sue. Notice must be given to the Administrator of the United States Environmental Protection Agency (EPA), the Regional Administrator of the EPA, the state in which the violations occurred, and to the alleged violator. By this letter, pursuant to 33 U.S.C. §§ 1365(a) and (b), CFE/Save the Sound hereby puts the City and/or the operators of its waste water collection and treatment system on notice that unless the City takes all steps necessary to remedy ongoing violations of its permit and the Clean Water Act, CFE/Save the Sound intends to file suit in the United States District Court following the expiration of the required 60 day notice period, seeking injunctive relief and civil penalties in the amount of \$37,500 per violation discussed below and for any additional, similar violations that CFE/Save the Sound may discover subsequently. If the City has any information suggesting that one or more of the violations outlined in this notice letter did not occur or is stated incorrectly, please immediately provide information to CFE/Save the Sound's counsel, specifying the violation in question.

### **Relief that CFE and Save the Sound will seek and Penalties for Violations of the Clean Water Act**

CFE/Save the Sound will seek injunctive relief from the court to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief permitted by law. In addition, pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date upon which CFE/Save the Sound serves this notice of intent to file suit. These provisions of law authorize civil penalties of up to \$37,500 per day for violations occurring after January 12, 2009.

Finally, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties or substantially prevailing parties to recover costs, including attorneys' fees and experts' fees associated with an enforcement action. CFE/Save the Sound intend to seek recovery of such costs and expenses.

## **Conclusion**

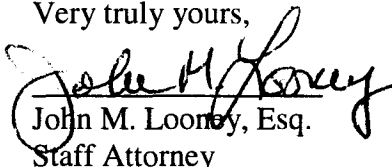
Upon the expiration of the 60 day notice period, CFE/Save the Sound intends to file a citizen suit under Section 505(a) of the Clean Water Act for the violations described herein, and for any similar violations that occur after the date of this notice letter.

Counsel representing CFE and Save the Sound in this matter are listed below.

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Very truly yours,



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## **SERVICE LIST**

### **VIA CERTIFIED U.S. MAIL**

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5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Rob Klee, Commissioner  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, CT 06106



## **ATTACHMENT A**

### **Unreported Bypasses**

- 1. 4/23/12- Volume of By-pass: 150 gallons; Cause: Blockage; Location: 20 Parker Street; Receiving Water: Still River.**
- 2. 4/25/12- Volume of By-pass: 10 gallons; Cause: Private ss issue; Location: 94 Locust Ave; Receiving Water: Padanaram Brook.**
- 3. 1/8/13- Volume of By-pass: 3,600 gallons; Cause: Blockage; Location: 46 Juniper Ridge Road; Receiving Water: Padanaram Brook.**
- 4. 3/19/13- Volume of By-pass: 2,000 gallons; Cause: FOG Issue; Location: Rockwell Road at I 84; Receiving Water: Beaver Brook.**
- 5. 6/16/13- Volume of By-pass: 500 gallons; Cause: FOG issue; Location Laurel Apts.; Receiving Water: Still River.**
- 6. 3/19/14- Volume of By-pass: 100 gallons; Cause: Debris; Location: Osborn & 5<sup>th</sup> Street; Receiving Water: Still River.**
- 7. 6/2/14- Volume of By-pass: 300 gallons; Cause: FOG; Location: 92 Triangle Street; Receiving Water: Still River.**
- 8. 6/17/14- Volume of By-pass: 250 gallons; Cause: Private SS issue; Location 2 Great Pasture Road; Receiving Water: Still River.**
- 9. 10/21/14- Volume of By-pass: 600 gallons; Cause: Roots; Location: 29 Old Shelter Rock Road; Receiving Water: Still River**
- 10. 1/11/15- Volume of By-pass: 100 gallons; Cause: FOG; Location: 11 Farview Drive; Receiving Water: Still River.**
- 11. 2/20/15- Volume of By-pass: 50 gallons; Cause: FOG; Location: Laurel Apts.; Receiving Water: Still River.**

- 12. 2/27/15- Volume of By-pass: 600 gallons; Cause: FOG; Location: Laurel Apts.; Receiving Water: Still River.**
- 13. 10/9/15- Volume of By-pass: 1,000 gallons; Cause: FOG; Location: Scuppo Road; Receiving Water: Unknown but reached catch basin or surface water.**
- 14. 10/10/2015- Volume of By-pass: 500 gallons; Cause: FOG; Location: Scuppo Road; Receiving Water: : Unknown but reached catch basin or surface water.**
- 15. 11/13/15- Volume of By-pass: 1,000 gallons; Cause: Roots; Location: Old Shelter Rock Road; Receiving Water: Still River.**
- 16. 11/14/15- Volume of By-pass: 50 gallons; Cause: FOG; Location: 19 Starr Ave.; Receiving Water: Still River.**
- 17. 1/10/16- Volume of By-pass: 1,000 gallons; Cause: Roots; Location: Jefferson Ave; Receiving Water: Blind Brook.**
- 18. 1/22/16- Volume of By-pass: 500 gallons; Cause: Roots; Location: Old Shelter Rock Road; Receiving Water; Still River.**
- 19. 2/3/16- Volume of By-pass: 500 gallons; Cause: Roots; Location: Old Shelter Rock Road; Receiving Water: Still River.**
- 20. 3/18/16- Volume of By-pass: 200 gallons; Cause: Roots; Location: 10 Old Sherman Tpk.; Receiving Water: Stony Hill Brook.**